

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL K. WHITTINGTON,

No. C-04-1539 MMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S LETTER
BRIEF SEEKING TO REOPEN CASE**

v.

(Docket No. 40)

OWENS-ILLINOIS,

Defendant.

Before the Court is a letter filed January 30, 2006 by plaintiff Darrell K. Whittington ("Whittington"), in which he requests that the Court reopen the instant action. On March 29, 2005, the Court granted defendant's motion to dismiss the instant action for failure to prosecute. On April 21, 2005, the Court denied Whittington's letter brief seeking reconsideration of the Court's dismissal order.

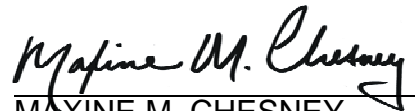
The only relevant new fact contained in Whittington's January 30, 2006 letter is that he has been incarcerated since February 12, 2005. Whittington's failure to prosecute the instant action, however, as discussed in defendant's February 22, 2005 motion to dismiss, predates Whittington's incarceration.

Accordingly, Whittington has not set forth good cause to reopen the instant action,

1 and his request to do so is hereby DENIED.

2 **IT IS SO ORDERED.**

3 Dated: February 7, 2006


MAXINE M. CHESNEY
United States District Judge